

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PNC FINANCIAL SERVICES GROUP,
INC.; and PNC BANK,

NO. CV-10-34-EFS

Plaintiffs,

vs.

**ORDER DENYING PLAINTIFFS'
MOTION TO ALTER OR AMEND THE
COURT'S ORDER ON SUMMARY
JUDGMENT**

PRIME LENDING, INC.; RONALD
D. THOMAS; and KALE SALMANS,

Defendants.

Before the Court, without oral argument, is Plaintiffs PNC Financial Services Group, Inc. and PNC Bank's (collectively, "Plaintiffs") Fed.R.Civ.P. 59(E) [sic] Motion to Alter or Amend the Court's Order on Summary Judgment, ECF No. [250](#). Plaintiffs ask the Court to reconsider its ruling granting Defendants Prime Lending, Inc., Ronald Thomas, and Kale Salmans' (collectively, "Defendants") Motions for Partial Summary Judgment, ECF No. [249](#). After reviewing the parties' submissions, the record in this matter, and applicable authority, the Court is fully informed. For the reasons given below, the Court denies Plaintiffs' motion for reconsideration.

I. Background

This action arises out of the 2009 mass-departure of employees from Plaintiffs' Spokane branch office. Plaintiffs filed the Complaint in the

1 Northern District of Ohio on September 16, 2009, alleging a number of
2 state and federal claims, and on February 5, 2010, the case was
3 transferred to this Court. ECF No. [21](#). On July 19, 2010, the Court
4 granted Defendants' motion to dismiss several of Plaintiffs' claims and
5 granted Plaintiffs' leave to amend the complaint. ECF No. [141](#). On July
6 20, 2010, the Court denied Plaintiffs' motion for a preliminary
7 injunction. ECF No. [142](#). On October 6, 2010, after the Court granted
8 Plaintiffs' second motion for leave to amend, Plaintiffs filed the First
9 Amended Complaint. ECF No. [181](#).

10 The First Amended Complaint asserted claims for breach of contract
11 and breach of the duty of loyalty against Mr. Thomas, and claims for
12 misappropriation of trade secrets, tortious interference with contract,
13 unfair competition, and civil conspiracy against Defendants. On March
14 6, 2012, the Court granted Defendants' motions for partial summary
15 judgment, dismissing PNC's breach of contract and tortious interference
16 with contract claims. ECF No. [249](#). Plaintiffs now ask the Court to
17 reconsider that ruling.¹

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20 ¹ The parties have violated the Court's Scheduling Order's
21 directives that "[n]o responses or replies to Motions to Reconsider shall
22 be filed unless the Court expressly requests responses or replies" and
23 **"[m]otions to reconsider shall not exceed five (5) pages."** ECF No. [201](#)
24 at 6-7 (emphasis in original). The Court cautions the parties that it
25 will strictly enforce the requirements in the Scheduling Order, the Local
26 Rules, and the Federal Rules of Civil Procedure as this matter moves

II. Discussion

Plaintiffs purport to bring their motion pursuant to Federal Rule of Civil Procedure 59(e), which permits a party to bring a motion to alter or amend a judgment within twenty-eight days of the entry of the judgment. Fed. R. Civ. P. 59(e). However, Plaintiffs' motion is more appropriately analyzed as brought pursuant to either 1) Federal Rule of Civil Procedure 54(b), which allows a district court to revise an interlocutory order "that adjudicates fewer than all the claims . . . at any time before entry of a judgment adjudicating all the claims," or 2) the district court's inherent common-law authority to rescind or modify any interlocutory order so long as the court retains jurisdiction over the matter. See *Credit Suisse First Boston Corp. v. Grunwald*, 400 F.3d 1119, 1124 (9th Cir. 2005).

Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Motions for reconsideration brought under Rule 59(e) are typically not granted "unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999) (citing *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)). Rule 54(b) does not address the standards a district court should apply when reconsidering an interlocutory order, and this District has no local rule governing

forward, and future violations of the above will result in an order to show cause why sanctions should not be imposed.

1 motions for reconsideration. *Cf.* W.D. Wash. CR 7(h)(1). However, when
2 reviewing motions for reconsideration of interlocutory orders, district
3 courts in the Ninth Circuit generally apply standards of review
4 substantially similar to those used under Rules 59(e) and 60(b). *See,*
5 *e.g., Nike, Inc. v. Dixon*, No. CV 01-1459-BR, 2004 WL 1375281 at *1-2 (D.
6 Or. June 16, 2004), *aff'd*, 163 Fed. Appx. 908 (Fed. Cir. 2006); *Motorola,*
7 *Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 583-86 (D. Ariz.
8 2003) (surveying relevant local rules for districts throughout the Ninth
9 Circuit). These courts have adopted the following conditions in
10 determining whether a motion for reconsideration may be granted:

11 1) There are material differences in fact or law from that
12 presented to the Court and, at the time of the Court's
13 decision, the party moving for reconsideration could not have
known of the factual or legal differences through reasonable
diligence;

14 2) There are new material facts that happened *after* the
Court's decision;

15 3) There has been a change in the law that was decided or
16 enacted *after* the Court's decision; or

17 4) The movant makes a convincing showing that the Court failed
18 to consider material facts that were presented to the Court
before the Court's decision.

19 *Motorola, Inc.*, 215 F.R.D. at 586. "No motion for reconsideration shall
20 repeat in any manner any oral or written argument made in support of or
21 in opposition to the original motion." *Id.*

22 Applying these standards to the instant motion, it becomes clear
23 that none of these prerequisite conditions are satisfied. Plaintiffs
24 have not alleged any material differences in fact or law, any new
25 material facts, or that a change in the law occurred after the Court's
26 decision. Nor do Plaintiffs make a convincing showing that the Court

1 failed to consider material facts when it decided Defendants' motions.
2 Rather, Plaintiffs ask the Court to reconsider its summary judgment
3 ruling because in rejecting Plaintiffs' argument that the Court should
4 hold Defendants' motions in abeyance pending the Supreme Court of Ohio's
5 decision in *Acordia of Ohio, LLC v. Fishel*, No. C-100071, 2010 WL 5275169
6 (Ohio App. Dec. 17, 2010), the Court stated that *Acordia* would not be
7 dispositive because "the mergers between National City and PNC were
8 governed by Pennsylvania and Delaware law." ECF No. [249](#) at 9. Plaintiffs
9 argue that there is "complete symmetry" between the merger laws of Ohio,
10 Pennsylvania, and Delaware, and thus that their right to enforce the non-
11 compete agreements at issue in this matter passed automatically by
12 operation of law. However, Plaintiffs misconstrue the Court's ruling;
13 the Court did not "h[o]ld that Ohio law no longer applies" in this
14 matter, ECF No. [251](#) at 3, but instead made the above-quoted statement in
15 the course of addressing Plaintiffs' argument that Defendants' motions
16 should be held in abeyance. And after careful review of the Court's
17 summary judgment ruling, the Court remains convinced in the soundness of
18 its ruling that the non-compete agreements did not assign to Plaintiffs
19 as a result of the mergers. Accordingly, the Court declines to vacate
20 its Order granting Defendants' motions for partial summary judgment.

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1 **III. Conclusion**

2 For the reasons discussed above, **IT IS HEREBY ORDERED:** Defendants'
3 Fed.R.Civ.P. 59(E) [sic] Motion to Alter or Amend the Court's Order on
4 Summary Judgment, **ECF No. [250](#)**, is **DENIED**.

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter
6 this Order and to provide copies to counsel.

7 **DATED** this 7th day of May 2012.

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9 S/ Edward F. Shea
10 EDWARD F. SHEA
United States District Judge

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